



January 7, 2002

Mr. Royce Poinsett
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2002-0085

Dear Mr. Poinsett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156993.

The Office of the Governor (the "Governor") received a request for the following information:

1. The complete application, including supporting documents and pages, submitted by or on behalf of Xavier Rodriguez regarding his prospective appointment or appointment as a Justice of the Texas Supreme Court.
2. All letters and other communications received by the Governor's Appointments Office in support of Xavier Rodriguez being considered for appointment to the Texas Supreme Court.

You claim that a portion of the requested information, a "DPS Clearance Form" submitted as Exhibit B, is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

¹You also originally argued that portions of the requested information are excepted from disclosure under sections 552.111, 552.130, and 552.137, as well as under section 552.101 in conjunction with common-law privacy. However, by letter to this office dated December 21, 2001, you withdrew your request for a ruling on any of the requested information other than the information in Exhibit B. Therefore, this ruling does not address any responsive information other than that you have submitted as Exhibit B.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Criminal history record information ("CHRI") is confidential and not subject to disclosure. Section 411.082 of the Government Code defines CHRI as follows:

(2) . . . information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

. . .

(B) driving record information maintained by the department under Subchapter C, Chapter 521, Transportation Code.

Gov't Code § 411.082(2). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, assuming that you have CHRI about the named individual in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor.

We note that Exhibit B also contains Texas driver's license numbers. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

The governor must withhold the Texas driver's license numbers in Exhibit B under section 552.130.

To summarize, to the extent that the submitted information contains CHRI about the named individual, the governor must withhold the CHRI from the requestor. The governor must withhold the Texas driver's license numbers in Exhibit B under section 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

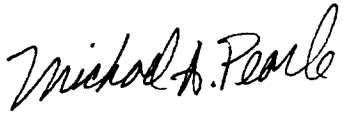
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" and last name "Pearle" clearly distinguishable.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 156993

Enc. Submitted documents

c: Mr. Robert Willmann, Jr.
P.O. Box 460167
San Antonio, Texas 78246
(w/o enclosures)